

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9679 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgement? No

J

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

GUJARAT HOUSING BOARD

Versus

NAVALKISHOR REVASHANKAR PANDYA

Appearance:

MRS KETTY A MEHTA for Petitioner

MR AK CLERK for Respondent.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 16/04/96

ORAL JUDGEMENT

The respondent was working as Valveman with the Gujarat Housing Board. He preferred an application under section 33-C(2) claiming wages for the weekly offs and that application was allowed by an order dated 8.11.1982 for the period upto 31.5.1980. The respondent claimed that he had worked on the weekly holidays even thereafter and continued to work as such even on weekly holidays till he retired on 31.1.1987 and he preferred yet another application under section 33-C(2) on 27.5.1987 claiming wages for weekly offs for the period after 31.5.1980 till the date of his retirement i.e. 31.1.1987. This application under section 33-C(2) for the period till 31.1.1987 has been allowed by the Labour Court, Rajkot vide his order dated 14.8.1995 passed in Recovery Application No. 235 of 1987.

This order dated 14.8.1985 passed by the Labour Court, Rajkot has been challenged by the Gujarat Housing Board through this Special Civil Application. The petitioner came with the case that application under section 33-C(2) preferred by the respondent before the Labour Court was time barred as it was filed after the period of seven years whereas the limitation was for only three years and further that the petitioner had never instructed the respondent to work on the weekly holidays. The notice was issued on 10.1.1996 by this Court as to why the petition may not be admitted and finally disposed of and this order dated 10.1.1996 is hereby treated as issue of the rule itself. Mr.A.K.Clerk has appeared on behalf of the respondent and has filed affidavit-in-reply dated 25.3.1996. In this affidavit-in-reply it has been stated interalia that the provisions of the Limitations Act did not apply to the proceedings under section 33-C(2). At the time of the argument Mrs.Mehta herself appearing on behalf of the petitioner gave up ground of limitation in view of the decision of the Supreme Court reported in AIR 1969 S.C. Pg.1335 [Athani Municipality Vs. Presiding Officer, Labour Court] AIR 1970 S.C. Pg.209 [Nityanand M.Joshi Vs. The Life Insurance Corporation of India] AIR 1977 S.C.Pg.282 [The Kerala State Electricity Board Vs. T.P.Kunhaliumma]

Mr.A.K.Clerk has also relied upon the latest Supreme Court decision reported in 1995(2) GLH Pg.550 [Municipal Corporation, Ahmedabad Vs. Voltas Ltd. and etc.etc.] holding that the Labour Court is not a Court subordinate to the High Court and that the decision in AIR 1977 SC Pg.282 [The Kerala State Electricity Board Vs. T.P.Kunhaliumma] (Supra) cannot apply to the application under the Industrial Disputes Act. I find that so far as the point of limitation is concerned same stand has been concluded against the present petitioner in view of the Supreme Court decision reported in AIR 1970 SC Pg.209 [Nityanand M.Joshi & Anr Vs. The Life Insurance Corporation of India & Others] (Supra). I need not to examine the question of delay further as this point has been given up by Mrs.Mehta herself, the learned counsel appearing for the petitioner.

Mrs.Mehta then referred to the document Exh.11 which had been tendered before the Labour Court by the present petitioner and it has been argued on the basis of the contents of this documents that the respondent workman himself had given in writing on 1.4.1987 that he had not been instructed orally or in writing to work on weekly holidays after the order had been passed earlier in his favour by the Labour Court on 8.11.1982 in the earlier proceedings under section 33-C(2). The main grievance of the petitioner is that this document Exh.11 has not been considered by the Labour Court and there is no reference to the document Exh.11 therein. At page 3 of the impugned order the Labour Court has taken notice of the case which the petitioner seeks to set up on the basis of the aforesaid document Exh.11. The Labour Court has duly noticed that after the earlier order dated 8.11.1982 the Gujarat Housing Board had not instructed the respondent workman orally or in writing to work on weekly holidays and therefore, it cannot be said that document Exh.11 has been ignored. The argument which is sought to be raised on the basis of this document has been considered by the Labour Court ofcourse without referring directly to Exh.11. Be that as it may the fact remains that admittedly the Gujarat Housing Board did not give it to the respondent workman in writing that he should not work on the weekly holidays and contents of Exh.11 as were read out by the learned counsel for the petitioner give an impression that the workman only meant to convey that even after the earlier order dated 8.11.1982 why he was not being given in writing or being told orally, as to whether he should work or not on the weekly holidays. Once the claim of the respondent had been earlier allowed way back in 1982 in respect of the wages in lieu of the weekly offs, the Officers of the

Gujarat Housing Board should have been vigilant and careful enough to instruct the respondent not to work on the weekly holidays, if at all, they wanted that he should not work on such weekly holidays. Mrs.Mehta has submitted that the burden of proof was on the respondent workman to prove that he had worked on weekly holidays under the instructions of the concerned officers of the Gujarat Housing Board and this burden should not be shifted upon the Gujarat Housing Board. Mrs.Mehta appearing on behalf of the petitioner is not right in making this submission because the correct legal position is that initially the burden rests on the workman but once he had raised the issue and had established that he had worked on these weekly holidays, the onus shifted upon the Gujarat Housing Board. The Gujarat Housing Board has not been able to show that the respondent had worked on these weekly holidays although he had been instructed not to work on holidays. The Labour Court while passing the impugned order has considered the evidence which was made available before it and it appears from the contents of para 4 of the order that the respondent vide document Exh.5 had asked for certain documents to be produced before the Labour Court and these documents were in complete control and custody of the Housing Board but the Housing Board did not produce these documents and therefore on the basis of whatever material which was available before the Labour Court, the Labour Court came to the conclusion that the respondent had worked on weekly holidays and in absence of production of the documents which had been asked for, the view had to be taken that the respondent workman had worked on the weekly holidays as the onus which stood shifted upon the Housing Board after the discharge of initial burden by the respondent, had not been discharged by the Housing Board. After all the respondent had come with the case that he had worked on weekly holidays for such long period from 1982 to 1987 and in such long period of seven years till the date of retirement the Housing Board had failed to show even a single letter written by it to the respondent that he is not supposed to work on these weekly holidays or that he was working at his own and therefore if he works as such, he will not be entitled to any wages in lieu thereof.

The respondent workman has already retired in January, 1987 and the Labour Court in the application under section 33-C(2) has passed the order for payment a sum of Rs.11,754.48 Ps. to the respondent for working on weekly offs. I do not find any basis to interfere with the orders passed by the Labour Court. This Special Civil Application has no substance and merit and the same

is hereby dismissed. Rule is hereby discharged. No order as to costs.
